domicil.[9] Some, at least, of these distinctions appear to be arbitrary. But while, as a matter of scientific accuracy, it would doubtless be desirable to limit the *situs* to one place only,[10] it is submitted that it is yet possible to evolve a theory which will admit of the *situs* being in several places, and will thus harmonize the above rules. As a share of stock is an intangible thing, it can of course have no actual *situs* in the sense that a corporeal object can have one. What is meant by its *situs* is the place where it is enforcible.[11] But though it is inconceivable that a tangible object should be in more than one place at one time, there is no difficulty, apart from constitutional and jurisdictional questions, in the abstract conception of a right or interest enforcible in an indefinite number of places at the same time,—not limited to one theoretical *situs*, but having an indefinite number. In the actual administration of the law, however, this theory necessarily conflicts with numerous other rules and principles, and is subject to certain obvious practical difficulties; so that the only practicable *situs* of such an intangible right or interest as a share of stock is the place where it can be most effectively dealt with.[12] Since this place may vary in accordance with the purpose for dealing with it, and is subject to the facts in each case, it is possible, without violating theory, for a share of stock to be situated in several places at the same time.[13] In its ultimate analysis, the test is really one of convenience. If this view be correct, the case of *Holmes* v. *Camp, supra*, is undoubtedly sound. For unquestionably it is convenient, in determining the title to stock, that its *situs* be considered to be in the state where the corporation in which it is a right or interest is itself situated. And even though it might have been decided that the *situs* was with the stockholder, as the law is settled, practicable, and not illogical, a decision according with it is to be supported.

Rights Under Invalid Adoption or Contract to Adopt.—Adoption, though usual in the Roman and civil law, was unknown to the common law, and is purely statutory in America.[1] Though the statutes vary somewhat in the different states, they all accord in vesting the adopted son with the same right to inherit from the adoptive parent as an ordinary child.[2] Since the statute is in derogation of

[9]Matter of Bronson (1896) 150 N. Y. 1, 8, 44 N. E. 707; Greves *v.* Shaw (1899) 173 Mass. 205, 53 N. E. 372; but *cf.* Neilson *v.* Russell (1908) 76 N. J. L. 655, 71 Atl. 286.

[10]See 16 Columbia Law Rev. 414.

[11]Amparo Mining Co. *v.* Fidelity Trust Co. (1909) 75 N. J. Eq. 555, 73 Atl. 249; 16 Columbia Law Rev. 414.

[12]Amparo Mining Co. *v.* Fidelity Trust Co., *supra*.

[13]Normally, of course, the stock will not be held to be situated in a state other than that of the domicil of the corporation or the stockholder, since it would not be practicable to deal with it there. Plimpton *v.* Bigelow, *supra*; Armour Bros. Banking Co. *v.* St. Louis Nat'l Bank (1892) 113 Mo. 12, 20 S. W. 690; McKane *v.* Burke (C. C. 1904) 132 Fed. 688.

[1]31 Cent. L. J. 66; *In re* Thorne (1898) 155 N. Y. 140, 49 N. E. 661.

[2]The statutes have been generally construed to allow the child to inherit from the adoptive parent only; but not through him from his lineal or collateral kindred. Keegan *v.* Geraghty (1881) 101 Ill. 26; see Phillips *v.* McConica (1898) 59 Oh. St. 1, 51 N. E. 445.

the common law, however, its formalities must be strictly observed, or no legal adoption can result;[3] but faulty articles of adoption may reasonably be construed as written contracts to adopt.[4] A distinction has been made between contracts where the adoptive parent promises merely to adopt the child, and where he agrees both to adopt and to make the child his heir, or to leave him specific property.[5] It is now settled that contracts to leave plaintiff property in a will or to make him an heir are valid, and that if the obligor dies intestate, or wills away his property to someone else, the promisee may specifically enforce the contract in equity and secure the property for himself;[6] or he may sue at law, the measure of damages being the value of the property promised.[7] Consequently, where there is such an agreement and where the adoption has never legally taken place at the death of the quasi-adoptive parent, the vast majority of courts have treated the entire transaction much like an ordinary contract to devise, and have granted specific performance.[8]

But where nothing is said in the agreement or in the defective adoption papers about leaving the child property or making him an heir, the recent case of *Webb* v. *McIntosh* (Iowa, 1916) 159 N. W. 637, held that he has no remedy in equity against the estate of his quasi-adoptive parent. There the father died intestate, and the plaintiff would have been sole heir, if the agreement to adopt had been

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[3]Prince *v.* Prince (1914) 188 Ala. 559, 66 So. 27.

[4]Chehak *v.* Battles (1907) 133 Iowa, 107, 110 N. W. 330. This result follows whether the articles contain a definite promise to adopt or merely an expression of present adoption.

[5]Chehak *v.* Battles, *supra;* Prince *v.* Prince (Ala. 1915) 69 So. 906; Hood *v.* McGehee (C. C. 1911) 189 Fed. 205.

[6]The theory seems to be that a trust attaches to the property in the hands of the new devisee for the benefit of the original obligee; Borland, Wills, § 8; Pomeroy, Specific Performance (2nd ed.) 268, n. 2; and the plaintiff gains by the proceedings in equity the same results that would have followed the execution of a will in compliance with the contract. Bolman *v.* Overall (1886) 80 Ala. 451, 2 So. 624; 3 Parsons, Contracts (9th ed.) *406.

[7]Benge *v.* Hiatt's Adm'r. (1885) 82 Ky. 666 (realty); Wellington *v.* Apthorp (1887) 145 Mass. 69, 13 N. E. 10 (personalty). By a confusion of the action with that of a *quantum meruit* for services, it has been held, illogically, that the measure of damages is the value of the services. See Carroll's Estate (1908) 219 Pa. 440, 68 Atl. 1038.

[8]Jordan *v.* Abney (1904) 97 Tex. 296, 78 S. W. 486; Kofka *v.* Rosicky (1894) 41 Neb. 328, 59 N. W. 788; Middleworth *v.* Ordway (1908) 191 N. Y. 404, 84 N. E. 291; Spencer, Domestic Relations, § 464. In Wright *v.* Wright (1894) 99 Mich. 170, 58 N. W. 54, the court in the interests of justice construed an adoption under an unconstitutional statute as a contract to adopt, though there seems little basis for such a construction of the facts. See Albring *v.* Ward (1904) 137 Mich. 352, 100 N. W. 609. But the Kentucky court, though enforcing a contract to leave specific property, Benge *v.* Hiatt's Adm'r., *supra,* inconsistently refuses to enforce a contract to make plaintiff an heir. Davis *v.* Jones' Adm'r. (1893) 94 Ky. 320, 22 S. W. 331. The theory of specific performance in such cases is that it is impossible to put the parties *in statu quo* by money damages. Healey *v.* Simpson (1892) 113 Mo. 340, 20 S. W. 881. In nearly all cases, the agreement of adoption is made between the child's natural parent and the adoptive parent, and the child is allowed to sue as the beneficiary of the contract in accordance with the American doctrine. Pomeroy, Specific Performance (2nd ed.) § 486; see 1 Columbia Law Rev. 328.

performed. But the court held that, though specific performance would have been decreed if the decedent had promised to leave him property, he could not get the statutory rights of inheritance attendant on adoption, without a strict compliance with the statute. This doctrine has been followed by the majority of cases, which deny relief at law or equity.[9] On principle, however, it would seem that, though equity could not force the deceased to adopt the child, it should decree, as it does in contracts to devise property,[10] that the legal results of adoption be accomplished, namely, that the child be declared a legal heir and entitled to his share of the estate.[11]

Where recovery has been refused, can the child recover the reasonable value of services rendered in the performance of his contract? The general rule is that where people live in a family relationship, services rendered to each other are presumed to be gratuitous.[12] This rule is not restricted to blood relations, but applies also to adopted children.[13] An express promise to leave property in consideration of such services is enough to rebut the presumption of gratuity, and recovery has been allowed on a *quantum meruit* even where the express promise was unenforcible.[14] By analogy, since a promise to adopt may give rights of inheritance if performed, it ought also to be sufficient to rebut the presumption that the services were intended as a free gift, and a recovery at least for work and labor should be allowed.

RETENTION BY EXECUTOR OR ADMINISTRATOR OF DEBTS BARRED BY STATUTE OF LIMITATIONS.—On any discussion of the right of the executor or administrator to set off debts barred by the Statute of Limitations, three main considerations arise: the effect of the Statute on the debt, the claimant's interest in the estate, and the remedies at the disposal of or employed by him. In jurisdictions where the Statute bars both remedy and right, no deduction for barred debts is permitted.[1] Real property is not subject to the doctrine, since not even valid claims can

[9]Renz *v.* Drury (1896) 57 Kan. 84, 45 Pac. 71; Albring *v.* Ward, *supra;* see Chehak *v.* Battles, *supra;* Prince *v.* Prince (Ala. 1915) 69 So. 906; *contra,* Crawford *v.* Wilson (1913) 139 Ga. 654, 78 S. E. 30; Thomas *v.* Maloney (1909) 142 Mo. App. 193, 126 S. W. 522; see Hood *v.* McGehee, *supra.*

[10]See note 6, *ante.*

[11]Thomas *v.* Maloney, *supra.* "Though the death of the promisor may prevent a literal enforcement of the contract, yet equity considers that done which ought to have been done, and, as one of the consequences, if the act of adoption had been consummated, would be that the child would inherit as an heir of the adopter, equity will enforce the contract by decreeing that the child is entitled to the fruits of a legal adoption." Crawford *v.* Wilson, *supra,* at p. 659. Of course, in such a case, the father could defeat the rights of his child by willing away his property. See Thomas *v.* Maloney, *supra.*

[12]Woodward, Quasi-Contracts, § 51.

[13]Deppen *v.* Personette (1900) 93 Ill. App. 513.

[14]See Renz *v.* Drury, *supra;* Taylor *v.* Thieman (1907) 132 Wis. 38, 111 N. W. 229.

[1]Hesley *v.* Shaw (1905) 120 Ill. App. 92; even where the debt is barred subsequent to the death of the testator. Light's Estate (1890) 136 Pa. 211, 20 Atl. 536. But debts of legatees are sometimes also advancements, and thus removed from the operation of the statute. *Re* Esmond (1910) 154 Ill. App. 357; see Boden *v.* Mier (1904) 71 Neb. 191, 98 N. W. 701.